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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Petition for Rulemaking to) RM 9006
Reclassify AT&T as Having)
Dominant Carrier Status)

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OPPOSITION OF AT&T CORP.

Pursuant to the Commission's Public Notice (DA 97-123), AT&T Corp. ("AT&T") opposes the petition of United Homeowners Association and United Seniors Health Cooperative to institute a rulemaking proceeding to "reexamine" AT&T and "reinstate" AT&T's status as a dominant interexchange carrier. The petition should be denied, not only because the arguments it presents were addressed in detail (and properly rejected) in the Commission's orders classifying AT&T as nondominant for domestic¹ and international² services, but also because the allegations in the petition, even if true, are immaterial under the Commission's established rules defining "dominant" carriers. Indeed, in all pertinent respects the petition is merely an improper

¹ Motion of AT&T to be Reclassified as a Non-Dominant Carrier, Order, FCC 95-427, released October 23, 1995 ("Domestic Nondominance Order").

² Motion of AT&T Corp. to be Declared Non-Dominant for International Service, Order, FCC 96-209, released May 14, 1996 ("International Nondominance Order").

and baseless collateral attack on the Commission's nondominance orders.

Petitioners (p. 2) cite three reasons why they believe the Commission should commence a rulemaking to reexamine and reinstate AT&T as a dominant interexchange carrier. First, pointing to certain selected rate increases by AT&T and its major competitors, they claim that consumers are adversely affected by the Commission's decision to classify AT&T as nondominant.³ Second, for exactly the same reason, they assert that it would be in the public interest to reinstate AT&T's status as a dominant carrier. Finally, they assert that a 54.2% market share supports a finding that AT&T is a dominant carrier. None of these claims has merit.

A carrier can only be classified as dominant if the Commission finds it could exercise market power in the relevant market. However, none of the claims in the petition, even if true, could support such a finding of market power. In the Domestic Nondominance Order, the Commission examined at length -- and found erroneous -- all claims that AT&T retains market power in the interexchange market. Indeed, after reviewing the extensive record, the

³ The petition ignores, moreover, the large number of AT&T rate decreases and the fact that AT&T's average revenue per minute has been decreasing.

Commission (¶ 39) expressly found that "AT&T neither possesses nor can exercise individual market power within the interstate, domestic, interexchange market as a whole."⁴ Furthermore, petitioners' assumption (p. 3) that AT&T's nondominant status enabled it to file a price increase without "obtain[ing] approval from the FCC" is based on a misunderstanding of the Commission's rules. Even as a dominant carrier subject to price caps, AT&T did not need any Commission approval to raise its rates within price cap limits. Thus, the change in AT&T's regulatory status did not affect its ability to make the referenced price changes.⁵

Petitioners' unsupported claims of "tacit collusion" among various IXC's also do not logically support regulatory action aimed solely at AT&T. The Domestic Nondominance Order (¶ 83) found that the record evidence regarding claims of alleged tacit collusion among the three largest IXC's was both "conflicting and inconclusive." And

⁴ See also International Nondominance Order, ¶ 98 (based on the facts in the record, Commission "conclude[s] that AT&T has demonstrated that it lacks market power in international telecommunications markets").

⁵ In all events, the petition fails to recognize that a carrier's nondominant status does not strip the Commission of its full authority and oversight with respect to the reasonableness of a carrier's rates. Such authority may be exercised sua sponte or in response to a complaint.

in all events, any attempt to paint the long-distance industry as an oligopoly, or as consisting of only three participants, must fail. The long-distance industry is in fact one of the greatest success stories of both antitrust law and the Commission's policies. Indeed, the Domestic Nondominance Order (§§ 46, 49) acknowledges that there are hundreds of companies providing long distance service.⁶ In addition, the Order (§ 62) found that as of 1994 carriers other than AT&T, MCI and Sprint accounted for over 17% of the market and can exert substantial "downward pressure on price."

The Domestic Nondominance Order also flatly disposes of petitioners' claim that AT&T's market share is a valid indicator of market power. Indeed, the Commission (§ 68) expressly held that "market share, by itself, is not the sole determining factor of whether a firm possesses market power." Further, the Commission stated (§ 67) that "AT&T's steadily declining market share for long-distance services also supports the conclusion that AT&T lacks market power in the relevant market" (emphasis added). The 54.2% share figure referenced in the petition is even lower than

⁶ See also Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, FCC 96-388, released September 20, 1996, Appx. F (identifying 22 carriers with over \$100 million in 1995 revenues).

the market share cited in the Order, and shows a further erosion of AT&T's market share since the Order was released. Thus, contrary to petitioners' claim, AT&T's current market share is not indicative of any market power, and the fact that petitioners (p. 5) "disagree" with that finding does not support the commencement of a new rulemaking.⁷

Conclusion

For the reasons stated above, the petition should be denied.

Respectfully submitted,

AT&T CORP.

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February 18, 1997

⁷ Two parties (Total Telecommunications Services, Inc. and Atlas Telephone Company), who have filed a formal complaint alleging that AT&T misused its nondominant status by terminating their "chat line" services, have filed comments in "support" of the petition. AT&T has fully responded to and rebutted these parties' claims in the complaint proceedings. In all events, their claims, even if true, do not justify a reclassification of AT&T in light of the Commission's findings that AT&T lacks market power.